

Strengthening Tenant Protections Against Retaliation by Landlord

*A Closer Look at HB820 (Lopez) and
an Overview of Anti-Retaliation
Landlord and Tenant Laws*

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Examples of Retaliation

- Case One:
 - Tenant and family (father, mother, toddler daughter) had their heat unlawfully shut off by landlord in the winter.
 - Tenant filed for relief in General District Court.
 - Within three days of tenant's case being filed, the landlord sued to evict the family. The tenant could not raise the retaliation because he could not prove landlord's intent.

Examples of Retaliation

- Case Two:
 - Tenant's water was unlawfully shut-off by landlord.
 - Tenant filed a Tenant's Assertion claim against landlord regarding the water shut-off.
 - Landlord brought an eviction action against Tenant.
 - Tenant had no proof of Landlord's intent therefore could not raise claim of retaliation.

The Problem

- The problem is . . .
 - Court never hears the entire story
 - Landlords are able to freely retaliate against tenants who assert their rights, especially where tenants have week-to-week or month-to-month leases which can be terminated with a week or a month's notice from landlord.

Uniform Residential Tenant Act

- URLTA provision prohibiting retaliation by landlords has been adopted, in some form, by 37 states, including Virginia
- States with retaliatory prohibition:
Alabama, Alaska, Arizona, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Washington, Wisconsin

Protected Rights of Tenants

- URLTA and VIRGINIA:
 - Complaints to building inspector
 - Complaints to/suit against landlord
 - Organizing/joining tenants organization
- VIRGINIA:
 - Testifying in a court proceeding against landlord

Prohibited Actions by Landlords

- URLTA and Virginia:
 - Increasing rent
 - Decreasing services
 - Bringing or threatening to bring an action for possession
- VIRGINIA:
 - Terminating a periodic tenancy, i.e. month to month or week to week

Burden of Proof

- URLTA: Presumption of retaliation if landlord commits prohibited act within *one year* of tenant asserting protected right
- 1 state has presumption for landlord acts within one year (Kentucky)
- 3 states have presumption for landlord acts within 90 days (DE, MN, VT)
- 12 states have presumption for landlord acts within 6 months (AZ, CA, CT, MA, ME, MD, MT, NH, NM, RI, TX)
- 19 states have no presumption (AL, AK, FL, HI, ILL, IN, KS, NC, NE, NJ, NV, OH, OR, SC, SD, TN, VA, WA, WI)

Burden of Proof

- URLTA/16 states: If landlord commits a prohibited act within the statutory time, creates a presumption of retaliation
- Virginia: Tenant has the burden of proving the landlord acted with retaliatory intent

Landlord “Safe Harbor” Provisions

- URLTA and VIRGINIA: Landlord may terminate rental agreement and/or bring an action for possession regardless of tenant taking protected action if:
 - Tenant responsible for building code violation
 - Tenant is in default in rent
 - Compliance with building code requires alteration, remodeling or demolition that would deprive tenant of unit

Landlord “Safe Harbor” Provisions:

VIRGINIA

- Tenant is in default of provision of rental agreement materially affecting the health and safety of himself and others
- Landlord may terminate periodic tenancy at end of term (i.e. month to month or week to week) for any reason not prohibited by law unless the court finds the primary reason for termination was retaliatory

Definition of Presumption

- *“Presumption” means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.”*

- Kentucky (One year)

- Arizona (Six months)

Under this definition, to be found to have acted lawfully, a landlord would simply need to put on credible evidence that there was a legitimate reason to terminate a tenancy, increase rent, decrease services or bring an action for possession.

Alternative Burden of Proof

- “It shall be **prima facie evidence** of retaliation” instead of “rebuttable presumption”
- To make a prima facie case, a plaintiff (tenant) must prove facts sufficient as a matter of law to raise an inference of retaliation
 - See, e.g., Swierkiewicz v. Sorema NA, 534 US 506 (2002)
(*employment discrimination case*)

How would this help?

- Case One:
 - Once Tenant proved Landlord had sued to evict a few days after Tenant sought relief from the unlawful shut-off in GDC, Landlord would have had to prove some legitimate reason for terminating. IF Landlord were claiming nonpayment of rent, Tenant would not have even been allowed to raise retaliation – even under HB820.

How would this help?

- “Month to Month” & “Week to Week” tenancies:
 - If Landlord tried to terminate tenancy, or raise the rent, within six months of tenant filing a claim against the landlord, filing a complaint with the building inspector, etc., tenant could put on evidence of this and court could consider retaliation
 - If Landlord had legitimate business or other reason for his action, he would not be liable